Supreme Court, U.S.
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In the Supreme Court of the United States

October Term, 1979

No. 79-1038

IN THE MATTER OF THE CLAIM
OF BIRCH E. PALMER,

Petitioner,

vs.

THE INDUSTRIAL COMMISSION
OF THE STATE OF COLORADO;
CUTLER-HAMMER, INC., Employer;
and AMERICAN MOTORISTS
INSURANCE COMPANY, Insuror,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF COLORADO

BRIEF IN OPPOSITION

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ARGUMENT IN OPPOSITION: THE COURT LACKS JURISDICTION BECAUSE NO FEDERAL QUESTION IS PRESENTED

Petitioner, a workmen's compensation claimant before the Industrial Commission of the State of Colorado, contends that the jurisdiction of the United States Supreme Court should be invoked because of a denial of his workmen's compensation claim by the Industrial Commission of the State of Colorado, which denial was affirmed by the Colorado Court of Appeals. The Colorado Supreme Court, by order of

October 23, 1979, denied the Petitioner's Writ of Certiorari to that court.

The Supreme Court's jurisdiction to review state supreme court decisions on a petition for writ of certiorari is found at 28 U.S.C. § 1257 as follows:

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows . . .
>
> (3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question of where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

Nowhere does the petition set forth an adequate basis for the Supreme Court to take jurisdiction of this case. Rather, the petition simply alleges that the Colorado Supreme Court abused its discretion in its failure to review Petitioner's case. Not only does it fail to state a federal question as required by 28 U.S.C. § 1257, but it fails to comply with the requirements of Rule 23 1.(b)(iii) and (f), Supreme Court Rules which require the petition to set forth the statutory provisions believed to confer jurisdiction on the Supreme Court as well as the stage and manner in which the federal questions sought to be reviewed were raised.

The Colorado Court of Appeals in this case has made a determination which dealt fully and accurately with the claimant's contentions.[1] The Colorado Court of Appeals made

[1] *In the Matter of the Claim of Birch E. Palmer v. Industrial Commission of the State of Colorado, et al.*, No. 79CA0178 (Colo. App., Aug. 23, 1979). (Included in Petition as Exhibit #6.)

a determination that the original administrative agency-referee order of July 1974, in which Petitioner was granted benefits for one day of lost work, which he did not appeal, could not properly be re-opened by a claim alleging mistake and a change of condition, and upheld the Industrial Commission referee in his finding that Petitioner's change in condition was not caused by the original accident. Since these findings of the referee were supported by competent evidence, they were found to be binding upon review by the appellate court.

Petitioner was afforded a hearing before the referee, with review by the Colorado Industrial Commission and the Colorado Court of Appeals followed by the denial of a petition for certiorari by the Colorado Supreme Court.

Petitioner asks this court to review a factual determination, one of causation of a worsened physical condition, which was made within the discretionary authority of the state Division of Labor and the state Industrial Commission. The exercise of discretion was upheld as supported by competent courts, and is not the proper subject of Supreme Court review.

The Petitioner has cited selected testimony from the administrative hearing but neglects to cite the specific testimony that was relied upon by the Court of Appeals in refusing to overturn the decision of the Industrial Commission referee. Further Petitioner attempts to collaterally attack an earlier decision which became binding due to his failure to appeal. This attempt was not successful in the state appellate courts, and should not succeed here.

There is no federal question raised in the petition, no federal question has ever been raised in the proceedings to date, and there is no jurisdictional basis on which this court may grant the petition.

CONCLUSION

The Petition for Writ of Certiorari fails to state an appropriate basis for jurisdiction, contrary to Rule 23, Supreme Court Rules, and further the petition fails to present a federal question such that this Court does not have jurisdiction pursuant to 28 U.S.C. § 1257(3). For these reasons the petition should be denied.

Respectfully submitted,

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CERTIFICATE OF MAILING

I hereby certify that on the _____ day of January, 1980, a true and correct copy of the foregoing BRIEF IN OPPOSITION, was mailed, postage prepaid, and properly addressed to the following:

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